

MR2919-9/C

Serial Number: 10/716,544

Reply to Office Action dated 15 May 2007

REMARKS/ARGUMENTS

This case has been carefully reviewed and analyzed in view of the Office Action dated 15 May 2007. Responsive to that Office Action, Claims 43-44 and 46 are now amended for further prosecution with the other pending Claims. It is believed that with such amendment of Claims, there is a further clarification of their recitations.

In the Office Action, the Examiner rejected Claims 43-54 on the ground of non-statutory obviousness-type double patenting as being unpatentable over certain Claims of prior Patent No. 6,697,375. Accordingly, a Terminal Disclaimer to Obviate a Double Patenting Rejection Over a "Prior" Patent is hereby submitted with the required Terminal Disclaimer fee duly charged to the Deposit Account noted below. It is believed that the non-statutory obviousness-type double patenting rejection is thereby obviated.

Also in the Office Action, the Examiner rejected Claims 43-54 under 35 U.S.C. § 103(a) as being unpatentable over the Schiff reference in view of the Javitt, et al. reference. In setting forth this rejection, the Examiner acknowledged that Schiff fails to explicitly teach a first transceiver having means for transmitting data at a first power level at a first data rate to a second transceiver equipped with means for transmitting second data at a second power level and a second data rate back to the first transceiver, or second means for determining the second data rate for second data transmission based upon the received power level. The Examiner,

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however, relied upon Javitt, et al. for disclosing as much and concluded that it would have been obvious to one having ordinary skill in the art to have incorporated the feature into Schiff's system.

As each of the newly-amended independent Claims 43-44 and 46 now more clearly recites, Applicants' claimed apparatus and methods include among their combinations of features the transmission between first and second transceivers at first and second data rates. The "second data rate" at which transmissions are made from the second transceiver back to the first transceiver is "determined based upon the received power level" of the data received, so as "to be adaptively adjustable responsive to a distance between" such "first and second transceivers," as each of the newly-amended independent Claims clarifies.

The full combinations of these and other features now more clearly recited by the pending Claims is nowhere disclosed by the cited references. As the Examiner readily acknowledged, the primarily cited Schiff reference fails to anywhere disclose the transmission of any second data at a second power level and a second data rate back to the first transceiver, let alone the determination of the second data rate based upon a received power level. Consequently, the reference could not disclose any adaptive adjustability for such second data rate in the responsive manner now more clearly recited in Claims 43-44 and 46.

The secondarily cited Javitt, et al. reference does disclose the modification of data rate in the wireless transmission of data, but does so to select between

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communication modes, and thereby implement "varied and customized wireless user services," (Column 2, lines 57-58), rather than to dynamically accommodate a received power level. Javitt, et al.'s method employs spread spectrum techniques, whereby "many bits" are transmitted to carry each "information bit" of the original signal - the ratio of such transmitted bits to original signal bits defining the "coding gain" (Column 1, line 65 – Column 2, line3). The reference prescribes the free control of this coding gain, to which data rate is negatively correlated (that is, the higher the coding gain, the lower the data rate for a given bandwidth), so that "any given data rate" may be utilized "at any given time," "for any given duration," between a transmitter and receiver (Column 3, lines 7-8). Such free and arbitrary controllability of data rate in the first instance precludes the determination of such "based upon" a "received power level," so as to be "adaptively adjustable responsive" to anything, much less "to a distance between ... first and second transceivers," as each of the newly-amended independent Claims now clarifies.

It is respectfully submitted, therefore, that the Schiff and Javitt, et al. references, even when considered together, fail to disclose the unique combination of elements now more clearly recited by Applicants' pending Claims for the purposes and objectives disclosed in the subject Patent Application.

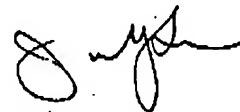
It is now believed that the subject Patent Application has been placed fully in condition for allowance, and such action is respectfully requested.

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Respectfully submitted,  
For: ROSENBERG, KLEIN & LEE



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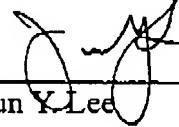
Dated: 9/17/2007

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Jun Y. Lee